

1 AN ACT relating to biometric identification.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section, "biometric identifier" means a retina or iris scan,*
6 *fingerprint, voiceprint, or record of hand or face geometry.*

7 *(2) A person shall not capture a biometric identifier of an individual for a*
8 *commercial purpose unless that person:*

9 *(a) Informs the individual before capturing the biometric identifier; and*

10 *(b) Receives the individual's consent to capture the biometric identifier.*

11 *(3) A person who possesses a biometric identifier of an individual that is captured for*
12 *a commercial purpose:*

13 *(a) Shall not sell, lease, or otherwise disclose the biometric identifier to another*
14 *person unless:*

15 *1. The individual consents to the disclosure for identification purposes in*
16 *the event of the individual's disappearance or death;*

17 *2. The disclosure completes a financial transaction that the individual*
18 *requested or authorized;*

19 *3. The disclosure is required or permitted by a federal statute or by a*
20 *state statute other than a section of KRS Chapter 61; or*

21 *4. The disclosure is made by or to a law enforcement agency for a law*
22 *enforcement purpose in response to a warrant;*

23 *(b) Shall store, transmit, and protect from disclosure the biometric identifier*
24 *using reasonable care and in a manner that is the same as or more*
25 *protective than the manner in which the person stores, transmits, and*
26 *protects any other confidential information the person possesses; and*

27 *(c) Shall destroy the biometric identifier within a reasonable time, but not*

1 longer than one (1) year from the date that the purpose for collecting the
2 identifier expires, except as provided in subsection (4) of this section.

3 (4) If a biometric identifier of an individual captured for a commercial purpose is
4 used in connection with an instrument or document that is required by another
5 law to be maintained for a period longer than the period prescribed by subsection
6 (3) of this section, the person who possesses the biometric identifier shall destroy
7 the biometric identifier within a reasonable time, but not longer than one (1) year
8 from the date that the instrument or document is no longer required by law to be
9 maintained.

10 (5) If a biometric identifier captured for a commercial purpose has been collected for
11 security purposes by an employer, the purpose for collecting the identifier under
12 subsection (3) of this section is presumed to expire on termination of the
13 employment relationship.

14 (6) Nothing in this section shall be construed to apply to:

15 (a) Voiceprint data retained by a financial institution or an affiliate of a
16 financial institution, as defined by the Gramm-Leach-Bliley Act, in 15
17 U.S.C. sec. 6809; or

18 (b) Biometric identifiers captured, collected, and used in crash avoidance
19 technology adopted by automobile manufacturers as long as the technology
20 does not make a specific person identifiable by his or her biometric
21 information.

22 ➔Section 2. KRS 367.990 is amended to read as follows:

23 (1) Any person who violates the terms of a temporary or permanent injunction issued
24 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of
25 not more than twenty-five thousand dollars (\$25,000) per violation. For the
26 purposes of this section, the Circuit Court issuing an injunction shall retain
27 jurisdiction, and the cause shall be continued, and in such cases the Attorney

1 General acting in the name of the Commonwealth may petition for recovery of civil
2 penalties.

3 (2) In any action brought under KRS 367.190, if the court finds that a person is
4 willfully using or has willfully used a method, act, or practice declared unlawful by
5 KRS 367.170, the Attorney General, upon petition to the court, may recover, on
6 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars
7 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged
8 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)
9 per violation, if the trier of fact determines that the defendant knew or should have
10 known that the person aged sixty (60) or older is substantially more vulnerable than
11 other members of the public.

12 (3) Any person with actual notice that an investigation has begun or is about to begin
13 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,
14 or falsifies documentary material is guilty of a Class A misdemeanor.

15 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240
16 or 367.250, intentionally falsifies or withholds documents, records, or pertinent
17 materials that are not privileged shall be subject to a fine as provided in subsection
18 (3) of this section.

19 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is
20 proposed, operated, or promoted may grant an injunction without bond, upon
21 complaint filed by the Attorney General to enjoin the further operation thereof, and
22 the Attorney General may ask for and the court may assess civil penalties against
23 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)
24 which shall be for the benefit of the Commonwealth of Kentucky.

25 (6) Any person, business, or corporation who knowingly violates the provisions of KRS
26 367.540 shall be guilty of a violation. It shall be considered a separate offense each
27 time a magazine is mailed into the state; but it shall be considered only one (1)

1 offense for any quantity of the same issue of a magazine mailed into Kentucky.

2 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be guilty
3 of a Class A misdemeanor.

4 (8) In addition to the penalties contained in this section, the Attorney General, upon
5 petition to the court, may recover, on behalf of the Commonwealth a civil penalty of
6 not more than the greater of five thousand dollars (\$5,000) or two hundred dollars
7 (\$200) per day for each and every violation of KRS 367.175.

8 (9) Any person who shall willfully and intentionally violate any provision of KRS
9 367.976 to 367.985 shall be guilty of a Class B misdemeanor.

10 (10) (a) Any person who violates the terms of a temporary or permanent injunction
11 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a
12 penalty of not more than five thousand dollars (\$5,000) per violation. For the
13 purposes of this section, the Circuit Court issuing an injunction shall retain
14 jurisdiction, and the cause shall be continued, and in such cases the Attorney
15 General acting in the name of the Commonwealth may petition for recovery of
16 civil penalties.

17 (b) 1. The Attorney General may, upon petition to a court having jurisdiction
18 under KRS 367.190, recover on behalf of the Commonwealth from any
19 person found to have willfully committed an act declared unlawful by
20 KRS 367.667 a penalty of not more than five thousand dollars (\$5,000)
21 per violation.

22 2. In addition to any other penalties provided for the commission of the
23 offense, any person found guilty of violating KRS 367.667(1)(c):

24 a. Shall be punished by a fine of no less than five hundred dollars
25 (\$500) for the first offense and no less than five thousand dollars
26 (\$5,000) for any subsequent offense; and

27 b. Pay restitution of any financial benefit secured through conduct

1 proscribed by KRS 367.667(1)(c).

2 3. The Office of the Attorney General or the appropriate Commonwealth's
3 attorney shall have concurrent enforcement powers as to fines, felonies,
4 and misdemeanors under this paragraph.

5 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
6 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
7 or incorrect information to the Attorney General in filing statements or reports
8 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.

9 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
10 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
11 violation to be collected in the name of the Commonwealth upon action of the
12 Attorney General.

13 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
14 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
15 the name of the Commonwealth upon action by the Attorney General.

16 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
17 367.816 shall be guilty of a Class C felony.

18 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
19 authority to prosecute violations of KRS 367.801 to 367.819.

20 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
21 Attorney General or the appropriate Commonwealth's attorney shall have authority
22 to prosecute violators of KRS 367.474 to 367.478 and 367.482.

23 (16) Any person who violates KRS 367.310 shall be guilty of a violation.

24 (17) Any person, partnership, or corporation who violates the provisions of KRS
25 367.850 shall be guilty of a Class A misdemeanor.

26 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets
27 back, disconnects, fails to connect, or causes to be changed, set back, or

- 1 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale
2 of the motor vehicle shall be guilty of a Class D felony.
- 3 (19) Any person who negotiates a contract of membership on behalf of a club without
4 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty
5 of a Class D felony.
- 6 (20) Any person or corporation who operates or attempts to operate a health spa in
7 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 8 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony; and
9 (b) The appropriate Commonwealth's attorney shall have authority to prosecute
10 felony violations of KRS 367.832.
- 11 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be
12 guilty of a violation. Either the Attorney General or the appropriate county
13 health department may prosecute violators of KRS 367.855 or 367.857.
14 (b) The provisions of this subsection shall not apply to any retail establishment if
15 the wholesaler, distributor, or processor fails to comply with the provisions of
16 KRS 367.857.
- 17 (23) Notwithstanding any other provision of law, any telemarketing company,
18 telemarketer, caller, or merchant shall be guilty of a Class D felony when that
19 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)
20 calendar year knowingly and willfully violates KRS 367.46955(15) by making or
21 causing to be made an unsolicited telephone solicitation call to a telephone number
22 that appears in the current publication of the zero call list maintained by the Office
23 of the Attorney General, Division of Consumer Protection.
- 24 (24) Notwithstanding any other provision of law, any telemarketing company,
25 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when
26 that telemarketing company, telemarketer, caller, or merchant uses a zero call list
27 identified in KRS 367.46955(15) for any purpose other than complying with the

1 provisions of KRS 367.46951 to 367.46999.

2 (25) (a) Notwithstanding any other provision of law, any telemarketing company,
3 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999
4 shall be assessed a civil penalty of not more than five thousand dollars
5 (\$5,000) for each offense.

6 (b) The Attorney General, or any person authorized to act in his or her behalf,
7 shall initiate enforcement of a civil penalty imposed under paragraph (a) of
8 this subsection.

9 (c) Any civil penalty imposed under paragraph (a) of this subsection may be
10 compromised by the Attorney General or his or her designated representative.
11 In determining the amount of the penalty or the amount agreed upon in
12 compromise, the Attorney General, or his or her designated representative,
13 shall consider the appropriateness of the penalty to the financial resources of
14 the telemarketing company, telemarketer, caller, or merchant charged, the
15 gravity of the violation, the number of times the telemarketing company,
16 telemarketer, caller, or merchant charged has been cited, and the good faith of
17 the telemarketing company, telemarketer, caller, or merchant charged in
18 attempting to achieve compliance, after notification of the violation.

19 (d) If a civil penalty is imposed under this subsection, a citation shall be issued
20 which describes the violation which has occurred and states the penalty for the
21 violation. If, within fifteen (15) working days from the receipt of the citation,
22 the affected party fails to pay the penalty imposed, the Attorney General, or
23 any person authorized to act in his or her behalf, shall initiate a civil action to
24 collect the penalty. The civil action shall be taken in the court which has
25 jurisdiction over the location in which the violation occurred.

26 (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand
27 five hundred dollars (\$2,500) per violation. Either the Attorney General or the

1 appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.
2 (27) Any person who violates Section 1 of this Act shall be liable for a penalty of not
3 more than twenty-five thousand dollars (\$25,000) for each violation. Either the
4 Attorney General or the appropriate Commonwealth's attorney may prosecute
5 violations of Sections 1 of this Act.